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Who Should Guard the Attorney-Client Privilege When Documents Are Seized by Law Enforcement?

Who Should Guard the Attorney–Client Privilege When Documents Are Seized by Law Enforcement?

Some cases may involve seizures of computers and other devices that contain millions of communications. Filter teams can help protect attorney–client privilege, but the law is in flux on how they should function.

BY DON SAMUEL AND SCOTT GRUBMAN

In Georgia and most other jurisdictions, state and federal, a typical criminal case often involves seizures of computers and other devices that may contain millions of communications. How is the attorney-client privilege protected? Today, in one way or another these problems are addressed either by a filter team (sometimes referred to as a "taint team" or a "privilege team"), a special master or a magistrate judge. But the law is in flux how these "teams" or arbiters should be comprised and how they should function. This article addresses the rapidly developing law that governs the formation and implementation of filter teams.

The developing law reflects several factors, including the different locations from which the digital information is acquired. A search warrant executed at a law firm inevitably captures an enormous amount of privileged information involving scores of clients, many of whom have no relationship at all with the suspected criminal activity for which there was probable cause to seize the documents.[1]

A search warrant targeting one lawyer (whether seeking information about the lawyer or a client),[2] results in the seizure of less privileged information. A search that targets a business may be able to limit the privileged information that the agents are permitted to examine by sequestering the communications involving a specified number of lawyers who provide legal advice to the business.[3] Yet, even accounting for these differences in the target and venue of the search, courts have examined the blueprint for filter teams and reached divergent views about what is necessary to protect the privilege holders without unduly hampering the efficiency of the law enforcement mission.

Though courts have been approving filter teams for the past 30 years at a common law pace, the evolution of the law went into overdrive with the 4th Circuit decision in *In re Search Warrant Issued June 13, 2019 (Baltimore Law Firm).*[4] From a criminal defense lawyer's perspective, *Baltimore Law Firm* exemplifies the principle, "bad facts make great law."

In *Baltimore Law Firm,* Lawyer "A" represented Client "A" (who was also a criminal defense lawyer); Client "A" represented a drug dealer. Law enforcement suspected that Lawyer "A" was corrupt and so was Client "A." A search warrant was issued for Lawyer A's law firm to seize evidence of Lawyer A's corrupt rep-

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resentation of Client A (who was allegedly corruptly representing the drug dealer).

In the search warrant application, prosecutors offered to utilize a filter team to ensure that the prosecution team would not be able to examine any seized privileged communications that were not subject to the crime-fraud exception.[5] The prosecutors chose who would be on the filter team, which would be comprised of local prosecutors (albeit from a different division of the same U.S. attorney's office) and various law enforcement agents and paralegals. The filter team would promptly furnish to the prosecution team all documents deemed by the filter team to be non-privileged.[6] Potentially privileged documents that the filter team believed could be redacted or that were subject to the crime-fraud exception would be reviewed with Lawyer A's lawyer. If an agreement could not be reached, the document would only be furnished to the prosecution team with a court order.

The search resulted in the seizure of more than 50,000 emails to and from Lawyer A, as well as other law firm lawyers' emails. Correspondence with numerous other clients was seized. Some of these clients had pending cases with the U.S. attorney's office unrelated to Client A—yet only 116 emails related to Client A.[7] The risk that privileged communications of clients and lawyers unrelated to either Lawyer A or Client A were reviewed was substantial. And the "filter" process was entirely too porous to prevent privileged information from reaching prosecutors and law enforcement agents throughout the district. The filter team was as reliably prophylactic as cigarette filters in preventing nicotine poisoning.

The district court denied the law firm's motion to enjoin the filter team process. An appeal was filed in the 4th Circuit which was heard on an expedited basis, and shortly after oral argument, the 4th Circuit reassigned the filter team's duties to a magistrate judge to review all seized materials, identify those not related to Client A and return them to the law firm, and conduct a privilege evaluation of the remaining materials. The filter team was abolished. After reviewing the importance of the attorney-client and work product privileges, the 4th Circuit held that it is a judicial function to enforce and protect the attorney-client privilege, not the job of law enforcement (and particularly DEA and IRS agents with no legal training). The court warned that it is never permissible to have the law enforcement fox in charge of the law firm hen house.[8] Moreover, the law firm should have been part of the process of devising the protocol for reviewing potentially privileged documents, rather than allowing the government to present its plan to the trial court *ex parte* with no input from the law firm.[9]

The Fourth Circuit lit the fuse, and now courts throughout the country are deciding how to monitor (or even permit) the filter team process that has become routine in white collar criminal prosecutions.

The 4th Circuit lit the fuse, and now courts throughout the country are deciding how to monitor (or even permit) the filter team process that has become routine in white collar criminal prosecutions. In the 11th Circuit, courts have generally held that *Baltimore Law Firm* is limited to its unique (i.e., "bad") facts, primarily the seizure of a substantial number of privileged communications of the

law firm's clients who had nothing to do with the crimes being investigated.[10] But *Baltimore Law Firm* has had a substantial impact on the functioning of filter teams even in the jurisdictions that reject the *Baltimore Law Firm*'s apparent total abolition of filter teams.

Georgia Law

In Georgia, when a search warrant targets an attorney's office (but the attorney is not alleged to have been involved in wrongdoing), to ensure that the attorney-client and work product privileges are protected, Georgia law provides that special procedures must be used.[11] This code section focuses on cases in which the attorney is *not* under investigation, yet there is probable cause to believe the attorney possesses documentary evidence relating to another person's crime. The warrant application must state that absent the execution of a search warrant, there is probable cause to believe the documentary evidence that is sought will be destroyed or concealed.

Only a superior court judge is authorized to issue a search warrant directed at an attorney. When a law office is the location to be searched, the state must use a special master to conduct the search and conduct the initial privilege review. The statute also includes a specific exclusionary rule if the statute is violated.[12]

Should the filter team protocol be subject to court approval in advance of the search/seizure (for example, in the search warrant that is issued by the magistrate)?

Even before the ubiquitous filter team protocols became contentious, courts had divergent opinions about whether search warrants should include detailed explanations about the protocol for searching a computer—even when the seizure of privileged communications was not anticipated. Some courts required the use of search terms or date limitations.[13] Ways to minimize the "plain view" discovery of evidence that was not identified in the "to be seized" clause of the warrant were formulated.[14] Standard language appeared in most computer search warrants dealing with the method of making a mirror image of the data and expediting the process to minimize the amount of time the IT experts stayed at the premises.[15]

Now, when searches are executed at businesses, or for other devices which are likely to include attorney-client communications, standard—almost boilerplate—language is included in the warrant about the use of a filter team.[16]

After the seizure, should the privilege holder be part of the formulation of the filter team protocol?

Rarely are the privilege holders invited to participate in formulating the filter team protocol unless the privilege holders challenge the search or the protocol that the government has proposed and the court orders the parties to meet and confer.[17] Yet, the 4th Circuit in the *Baltimore Law Firm* case decried the *ex parte* proceedings that allowed the government to seek approval of the filter team process without any input from the law firm.[18]

In *United States v. Ritchey,*[19] the magistrate judge held that there is no immutable requirement that a search warrant outline the filter team process that will be implemented. However, the court applauded the government's "typical" process of "seek[ing] court preapproval of its filter team protocol in an adversarial context or an informal, good faith resolution with the defendant … . Absent specific facts evidencing mishandling or other misconduct, courts have widely approved of filter team protocols formed through this process."[20] The court condemned the government's unilateral creation of a protocol that did not apprise the privilege holder (or the court) about the process the filter team would follow.

Who should be conducting the filtering process?

This is usually a hotly contested issue. Of course, there should be no participation by any member of the filter team in the work of the prosecution team.[21] Though most courts do not start with the belief that a special master is required, historically special masters have been used in unusual situations.[22] If a filter team is deemed to have been too lax in protecting the privilege, a court may call an audible and direct that a special master take over.[23] If the court finds a filter team has failed to protect the privilege, the court may also utilize the exclusionary rule to deter future lapses and protect the privilege to the extent the genie can be put back in the bottle.[24]

Nevertheless, the prevailing view is that the government is not categorically prohibited from utilizing a filter team; most courts have rejected the *Baltimore Law Firm* holding that the separation of powers doctrine requires the court, not the executive branch, to be the initial arbiter of privilege applicability.[25]

The controversy more often has a narrower aperture and only addresses whether the privilege "wall" is more likely to function properly if the filter participants (agents and assistant U.S. attorneys) are from another jurisdiction. This is advisable not just to avoid colleagues in the same office being required to keep secrets from one another, but it also avoids having prosecutors in the "home" jurisdiction reading local attorneys' communications.[26]

In particularly large cases with hundreds of thousands of emails to be reviewed, the Department of Justice will often use lawyers in their "special matters" unit that have the ability and know-how to sift through hundreds of thousands of emails and communicate with scores of privilege holders preparing privilege logs that may be hundreds of pages long.[27]

Baltimore Law Firm, which condemned the practice of having any law enforcement agents participate in the decision-

making process on separation of powers grounds is the prevailing law in the 4th Circuit. But whether it is adopted by other circuits remains to be seen.

What process should be used by the filter team?

In *Korf*, the 11th Circuit approved the filter team protocol that provided the privilege-holder the opportunity to review all seized evidence and to prepare a privilege log before the filter team reviewed the evidence. If the privilege-holders and the government agreed on the release of any other documents to the investigative team, the disclosure was permitted. If the privilege-holder and the government could not agree on an item on the privilege log, then a court order would be necessary to release any document. Thus, nothing could be produced to the investigative team, absent either the privilege-holder's consent or the court's approval (with notice to the privilege-holder). No document could be provided to the investigative team inadvertently by the filter team or without the knowledge of the privilege-holder.

What should happen after the filter team finishes its initial review?

Most decisions in the past 10 years have required the disclosure of seized material to the privilege holder prior to disclosure of any information to the prosecution team. This is commonly referred to as the "objection process."[28] Some courts require the filter team to provide *all* information to the privilege holder prior to disclosing *anything* to the prosecution team. Other decisions permit the filter team to disclose unprivileged material to the prosecution team but requires disclosure of questionable documents (or documents possibly subject to the crime fraud exception) to the privilege-holder in an effort to reach agreement (and if no agreement is reached, the documents in dispute are provided to the court).

One exception to the rule that requires participation of the privilege holder in the disclosure process exists in cases of wiretaps. When a target's phone is wiretapped, a communication with an attorney may be intercepted; sometimes these calls are quickly minimized; other times, not. In either case, the question is whether the intercepted privileged communication can be provided to the prosecution team if the filter team determines that the communication was not privileged or was subject to the crime fraud exception. In *United States v. Scarfo,*[29] the 3rd Circuit approved the filter team's disclosure of the seized communications to the prosecution team without notifying the privilege holder that the interception had occurred, or that the filter team decided that the crime fraud exception applied.

What happens if the filter team discovers another crime in the documents being reviewed that are either privileged or not privileged?

If the incriminating evidence is privileged, it cannot be produced to the prosecution team. But is the filter team obligated to return the evidence to the privilege holder and keep the existence of a newly discovered crime a secret not only from the prosecutors in this case, but from all other investigators?

What if the privileged document establishes guilt of the privilege-holder of a violent crime in the past for which some other person has been wrongfully convicted? It is one thing to ask the perennial question about a defense lawyer's ethical obligation to keep this information within the privilege. But does the filter team have the same obligation?

For example, assume the filter team reviews a memo (in an insider trading case), in which a suspect reports to the lawyer, "I bribed the mayor and three county commissioners in order to win the contract to repair the county's sewers." Is the filter team barred from doing anything with that document that was lawfully obtained (by authority of a search warrant) and lawfully examined (by authority of the filter team process)? Are the filter team members allowed to make "derivative use" of the information? Can the agents on the filter team subpoena bank records of the county commissioners or the suspect? Can the agents on the filter team ask the defendant if he is willing to have a voluntary conversation about some matters that have come to the attention of the agents? Or are the filter team members limited to the review of "insider trading" documents?

Are these questions all answered by considering the fruit of the poisonous tree doctrine, and, if so, how large is the orchard and how close to the tree must the fruit fall to be suppressed? Or is this scenario akin to the plain view doctrine? Just because the document may be subject to the exclusionary rule, is the filter team sworn to secrecy in all venues from disclosing criminal conduct it discovers during a legitimate search that is authorized by a federal magistrate? Plain view is customarily relied upon to legitimate the discovery of unexpected evidence during a computer search.[30] But plain view assumes the law enforcement officer is in a place the officer is entitled to be. But nobody is supposed to be in a position where an observation of privileged documents should be possible—and certainly not a law enforcement officer.

More problematic is the choice confronting the privilege holder if it is learned that seized documents reveal another crime with documents that are not privileged but have not been unearthed by the filter team. This possibility presents a strategic problem for the defense. Should the privilege holder "whistle by the graveyard" and hope the incriminating nature of the document is not discovered by the prosecution team? Unless the privilege holder is allowed to challenge the breadth of the search (seizing documents that were not within the scope of the warrant), there is no basis to challenge

the filter team's authority to present the non-privileged documents to the investigating team. Yet, unless the incriminating evidence is a needle in a haystack that the investigating team may not find, the lure to challenge the production of the incriminating document to the prosecutors may be too much to ignore.

What happens to documents that are unquestionably *not* within the "to be seized" clause of the warrant, but are not privileged? Are those documents provided to the prosecution team? Should the filter team be responsible for also filtering documents that should never have been seized?

Courts have wrestled with the interplay between the plain view doctrine and computer searches for decades. There is no practical way for searching agents to avoid "viewing" various documents or images on a computer that are not within the "to be seized" clause of a search warrant.[31] Ironically, a filter team may be the solution in many cases if the filter team is charged not only with filtering privileged information, but also filtering documents—and returning the documents to the owner—that are not within the "to be seized" clause of a warrant.

In a recent district court opinion, the court approved a protocol that required the government to begin the review process—even before the filter team gains access to the documents—by limiting the seizure to documents that had relevant search terms.

> First, a FBI forensic analyst not associated with either the investigative team or the filter team would run certain search terms against the content of the phone to identify responsive materials without reviewing any of the underlying materials themselves. ... Any materials not captured by the search terms would be deemed non-responsive and would be returned to [the privilege holder] without either the filter team or the investigative team ever reviewing them.[32]

In short, the court created a pre-filter team filter.

What is the procedure for challenging the process pursuant to Fed.R.Crim.P. 41 or in a civil action?

The recent *Trump* and *Mar-A Lago* litigation[33] has highlighted some courts' reluctance to involve the judicial branch in the executive branch's investigation of criminal matters. District courts have no general equitable authority to supervise federal criminal investigations. Prior to indictment, the executive branch—Department of Justice—is in charge unless exceptional circumstances are shown to necessitate the court's intervention.[34]

Richey v. Smith identified four factors that would authorize the court's intervention during the investigatory phase of a criminal case, in particular, to require the government to return seized property: (1) whether the government has displayed a callous disregard for the constitutional rights of the plaintiff; (2) whether the plaintiff has an individual interest in and need for the material; (3) whether the plaintiff would be irreparably injured by denial of the return of the property; and (4) whether the plaintiff has an adequate remedy at law.[35] The *Trump* decision in the 11th Circuit held that there was no jurisdiction for the federal court to intervene in the investigation—based on the appellate Court's conclusion that *Trump* did not satisfy even one of the *Richey* factors.[36]

The 11th Circuit explained why a civil case seeking equitable relief is the appropriate procedural mechanism for challenging the filter team protocol in *Korf.* Because seeking equitable relief does not challenge the validity of the search or seizure under the Fourth Amendment, the proceeding is not linked to any criminal prosecution.[37] The 11th Circuit concluded, "The damage from any error in the district court [regarding the filter team process] would be 'definitive and complete,' if interlocutory review is not available, and would outweigh any 'disruption caused by the immediate appeal.' ... 'The whole point of privilege is privacy.'... So the Intervenors' interests in preventing the government's wrongful review of their privileged materials lie in safeguarding their privacy. ... Once the government improperly reviews privileged materials, the damage to the Intervenors' interests is 'definitive and complete."[38]

Trump, on the other hand failed to articulate any misconduct on the part of the government and offered no specifics about an irreparable injury that would result from the court's failure to intervene in the criminal investigation. For that reason, his civil case was dismissed by the 11th Circuit.[39]

Conclusion

The evolution of the filter team process is ongoing. As the circuits come to grips with the protocols that authorize prosecutors to make the initial privilege determinations (a determination that in all other contexts is a judicial function), and the courts' involvement in what has traditionally been the executive branch investigative function (reviewing seized evidence), nothing should be taken for granted by either the defense or the prosecution. ●

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Journal, including most recently "The Truth, the Whole Truth and Nothing But the Truth—Well … Not Exactly. Trial Attorney Ethical Problems," in the October 2021 publication. He is a past-president of the Georgia Association of Criminal Defense Laywers and serves on the COVID-19 Task Force created by the Supreme Court of Georgia.

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Endnotes

1. In re Search Warrant Issued June 13, 2019 (Baltimore Law Firm), 942 F.3d 159 (4th Cir. 2019).
2. In re Search Warrants, 2021 WL 5917983 (N.D. Ga. 2021) (Grimberg, J.).
3. In re Sealed Search Warrant and Application for Warrant (Korf), 11 F.4th 1235 (11th Cir. 2021) (hereinafter *Korf)*.
4. 942 F.3d 159 (4th Cir. 2019) (hereinafter *Baltimore Law Firm)*.
5. If a communication between a client and an attorney is in furtherance of the commission of a crime, the crime-fraud exception to the privilege applies. In re Grand Jury Subpoena, 2 F.4th 1339 (11th Cir. 2021); United States v. Zolin, 491 U.S. 554 (1989). Determining whether the crime-fraud exception applies involves a two-part test: (1) there must be a prima facie showing that the client was engaged in criminal or fraudulent conduct when they sought the advice of counsel, that they were planning such conduct when they sought the advice of counsel or that they committed a crime or fraud subsequent to receiving the benefit of counsel's advice; and (2) there must be a showing that the attorney's assistance was obtained in furtherance of the criminal or fraudulent activity, or was closely related to it. In re Grand Jury Subpoena, 2 F.4th 1339, 1345 (11th Cir. 2021).
6. Prior to the appeal to the Fourth Circuit, this provision was modified, and the non-privileged documents were first furnished to the law firm prior to

the documents being provided to the prosecution team.

7. The record revealed that 99.8% of the 52,000 emails seized by the government were not from Client A, were not sent to Client A and did not mention Client A's surname.
8. The Court relied heavily on the earlier Sixth Circuit opinion in In re Grand Jury Subpoenas, 454 F.3d 511 (6th Cir. 2006), which held that the privilege holder has the right to make the initial assessment whether documents subpoenaed by the grand jury are covered by the attorney-client privilege, not the government. There is obviously a difference between the use of a filter team when the documents are already in the possession of the government by virtue of a search warrant seizure and when the documents are still in the possession of the privilege holder (or an attorney) when the issue arises in the context of a grand jury subpoena.
9. 942 F.3d at 178-179.
10. *See, e.g.,* In re Sealed Search Warrant and Application for a Warrant, 11 F.4th 1235 (11th Cir. 2021); In re Search Warrant (Beard), 1:19-mc-1299-TCB (N.D.Ga. April 28, 2020) (the suspect was represented by one of the authors of this article); In re Search Warrants, 2021 WL 5917983 (N.D. Ga. 2021) (Judge Grimberg).
11. O.C.G.A. § 17-5-32.
12. O.C.G.A. § 17-5-32(d).
13. *See, e.g.,* United States v. Khanani, 502 F.3d 1281 (11th Cir. 2007); United States v. Kow, 58 F.3d 423, 427 (9th Cir. 1995); In re Search of 3817 W. West End, 321 F.Supp.2d 953, 962 (N.D.Ill. 2004); United States v. Triumph Capital Group, Inc., 211 F.R.D. 31 (D. Conn. 2002); United States v. Blake, 868 F.3d 960 (11th Cir. 2017) (limiting scope of search of Facebook account); United States v. Mercery, 2022 WL 585144 (M.D.Ga. 2022) (limiting search of Instagram account).
14. *See, e.g.,* United States v. Loera, 923 F.3d 907 (10th Cir. 2019); United States v. Upham, 168 F.3d 532, 535 (1st Cir. 1999); United States v. Comprehensive Drug Testing, Inc, 621 F.3d 1162, 1178 (9th Cir. 2010) (*en banc*) (Judge Kozinski, concurring); In re U.S.'s Application for a Search Warrant (Cunnius), 770 F.Supp.2d 1138 (W.D.Wash. 2011).
15. *See, e.g.,* United States v. Hill, 459 F.3d 966 (9th Cir. 2006); United States v. Vilar, 2007 WL 1075041, *35 (S.D.N.Y. 2007).
16. *See, e.g.,* In re Search Warrants, 2021 WL 5917983 (N.D.Ga. 2021) (Judge Grimberg).
17. *Korf*, 11 F.4th at 1241.
18. 942 F.3d at 178-179.
19. --- F.Supp.3d --- , 2022 WL 3023551 (S.D. Miss. 2022).
20. *Id.* at *5.
21. U.S. Dept. of Justice, *Justice Manual*, §9-13.420 (2022); United States v. Scarfo 41 F.4th 136, 172 n. 29 (3d Cir. 2022).
22. *See, e.g.,* Klitzman, Klitzman & Gallagher, 744 F.2d 955, 962 (3rd Cir. 1984); United States v. Abbell, 914 F. Supp. 519, 519 (S.D. Fla. 1995); Cohen v. United States, No. 1:18-mj-03161, 2018 WL 1772209 (S.D.N.Y. Apr. 13, 2018), ECF No. 30 (April 27, 2018) (appointing special master to review documents seized from lawyer who formerly represented Trump); United States v. Stewart, No. 1:02-cr-00396, 2002 WL 1300059, at *5, *10 (S.D.N.Y. June 11, 2002) (appointing special master to perform privilege review of documents seized from office of criminal defense lawyer defending terrorism defendants).
23. Trump v. United States, 22-13005 (11th Cir. 2022); United States v. Noriega, 752 F. Supp. 1032, 1033 (S.D. Fla. 1990).
24. United States v. Esformes, 2018 WL 5919517, *20-24 (S.D.Fla. 2018), *affirmed,* 2023 WL 118497, *6-7 (11th Cir. 2023). *See also* O.C.G.A. § 17-5-32, discussed *supra* at footnotes 11-2 and accompanying text (special master required for law office searches in Georgia).
25. *Korf*, 11 F.4th at 1249-50; United States v. Ritchey, --- F.Supp. 3d ---, 2022 WL 3023551 (S.D.Miss. 2022); United States v. Avenatti, 559 F. Supp. 3d 274, 282 (S.D.N.Y. 2021).
26. *See* In re: Search Warrants, 2021 WL 5917983 (N.D. Ga. 2021) (Grimberg, J.).

    One of the authors of this article was involved in a case where the filter team was given copies of the author's emails to his client (the client was accused of attempting to obstruct justice post-indictment). The author's emails to his client offered his opinion about the judge in the case. The fact that the filter team was comprised of assistant U.S. attorneys from the jurisdiction in which the author regularly practiced was, to say the least, somewhat embarrassing. Maybe the prosecution team assistant U.S. attorney (AUSA) did not learn about the author's opinion, but the filter team AUSA did, and nothing prevented that AUSA from using that information in the future.
27. *See* Special Matters: Filtering Privileged Materials, 49 Am.J.Crim.L 63 (2021) (explaining that the Special Matters Unit was created in large part as a result of the historic botched use of a filter team in the initial stages of the *Esformes* case in Miami, United States v. Esformes, 2018 WL 5919517 *20-24 (S.D.Fla. 2018) *affirmed,* 2023 WL 118497, *6-7 (11th Cir. 2023)). One of the earliest cases in which the Special Matters unit at the Department of Justice was involved was United States v. Satary, 504 F. Supp. 3d 544 (E.D. La. 2020) (the defendant is represented by one of the authors of this article).
28. United States v. Ritchey, --- F.Supp. 3d --- , 2022 WL 3023551 (S.D. Miss. 2022).
29. United States v. Scarfo, 41 F.4th 136, 173 (3d Cir. 2022).
30. *See generally* United States v. Loera, 923 F.3d 907 (10th Cir. 2019); United State v. Carey, 172 F.3d 1068 (10th Cir. 1999); United States v. Ganias, 824 F.3d 199 (2d Cir. 2016) (*en banc).*
31. United States v. Comprehensive Drug Testing, Inc, 621 F.3d 1162 (9th Cir. 2010) (*en banc*) (Barry Bonds related steroid investigation case; not involving filter team but does involve what prosecutor should do about limiting searches of computers in the first place); *In re* U.S.'s Application for a Search Warrant (Cunnius), 770 F.Supp.2d 1138 (W.D.Wash. 2011).
32. Matter of O'Donovan, 2022 WL 10483922, at *1 (D.Mass. 2022).
33. Trump v. United States, 22-13005 (11th Cir. 2022).
34. Richey v. Smith, 515 F.2d 1239 (5th Cir. 1975); Younger v. Harris, 401 U.S. 37, 43-44 (1971).
35. 515 F.2d at 1243-44.
36. Trump v. United States, 54 F.4th 689 (11th Cir. 2022).
37. In the Matter of Grand Jury Proceedings, United States v. Berry, 730 F.2d 716 (11th Cir. 1984).
38. In re Sealed Search Warrant and Application for a Warrant by Telephone or Other Reliable Electronic Means, 11 F.4th 1235, 1246–47 (11th Cir. 2021).
39. Trump v. United States, 54 F.4th 689 (11th Cir. 2022).